

REQUEST FOR COUNCIL ACTION

MEETING

DATE: 10-20-03

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AGENDA SECTION: PUBLIC HEARINGS	ORIGINATING DEPT: PLANNING	ITEM NO. ES
ITEM DESCRIPTION: Zoning District Amendment #03-17 by Mark Leitzen to amend the zoning from R-1 (Mixed Single Family) to the B-1 (Restricted Commercial) district on approximately 10.53 acres of land. The property is located east of HyVee, north of West River Parkway, south of 37 th Street NW and west of the Zumbro River.		PREPARED BY: Brent Svenby, Planner

October 10, 2003

City Planning and Zoning Commission Recommendation:

The City Planning and Zoning Commission held a public hearing on September 24, 2003 to consider this zone change. The Commission also reviewed a GDP for the property.

Adjacent property owners spoke in opposition to the proposed rezoning of the property to the B-1 zoning district. They suggested the B-5 district for the property.

The Commission reviewed the zone change request based on the criteria as included in the staff report and recommended Approval, with staff suggested findings.

Motion by Mr. Staver, seconded by Mr. Haeussinger to recommend approval of Zoning District Amendment #03-17, with staff-recommended findings. Motion carried 6-1, with Ms. Rivas voting nay.

Planning Staff Recommendation:

See attached staff report dated September 19, 2003.

Council Action Needed:

The Council should direct the City Attorney to prepare findings of fact reflecting the Councils decision on this zone change.

If the Council approves this zone change as petitioned, it should instruct the City Attorney to prepare an ordinance that can be adopted supported by findings of fact and conclusions of law to amend the Zoning for the property

Attachments:

1. Staff Report dated September 19, 2003
2. Minutes of the September 24, 2003 CPZC Meeting
3. Minutes of the March 17, 2003 City Council Meeting

Distribution:

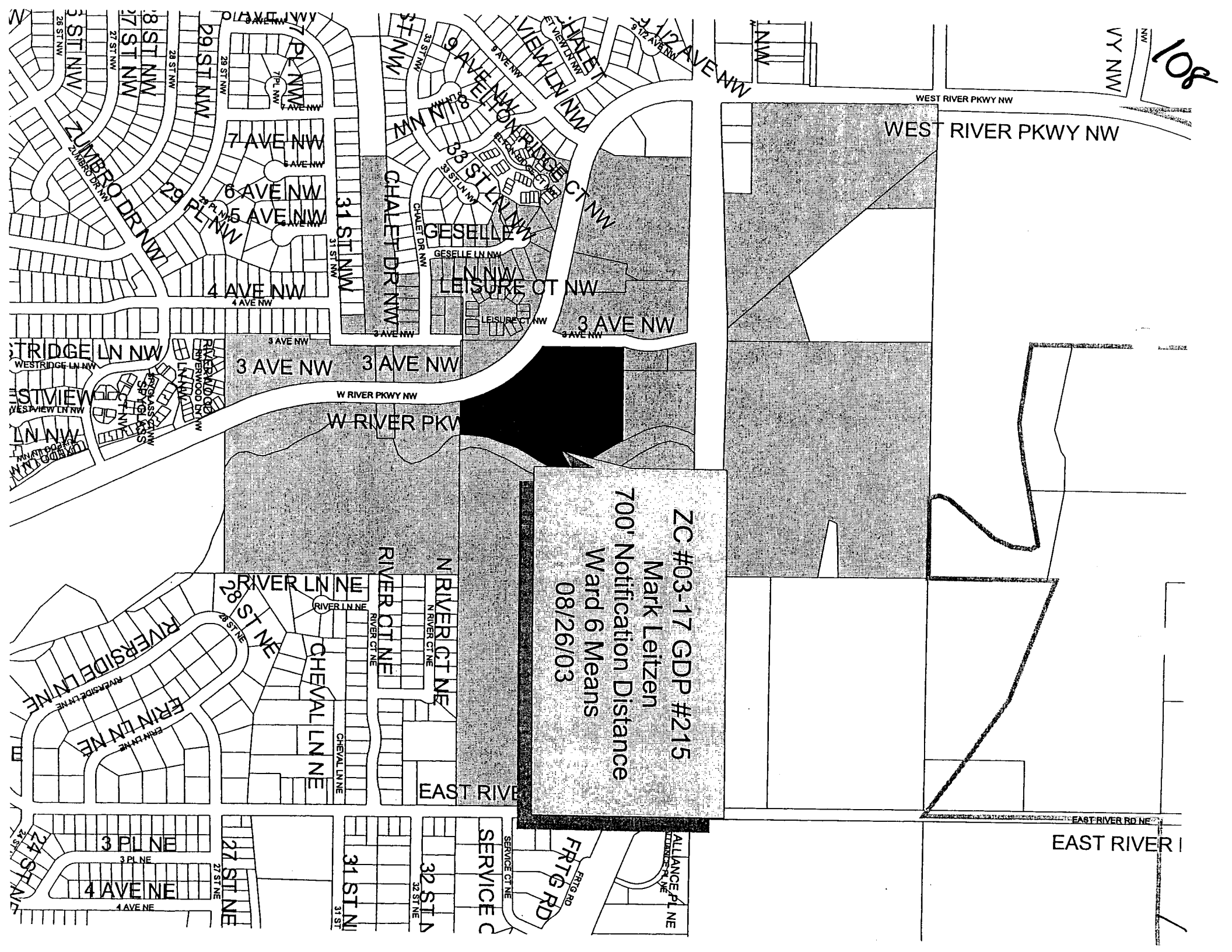
1. City Administrator
2. City Attorney: Legal Description
3. Planning Department File
4. Applicant: This item will be considered sometime after 7:00 p.m. on Monday, October 20, 2003 in the Council/Board Chambers at the Government Center, 151 4th Street SE.

COUNCIL ACTION:

Motion By:

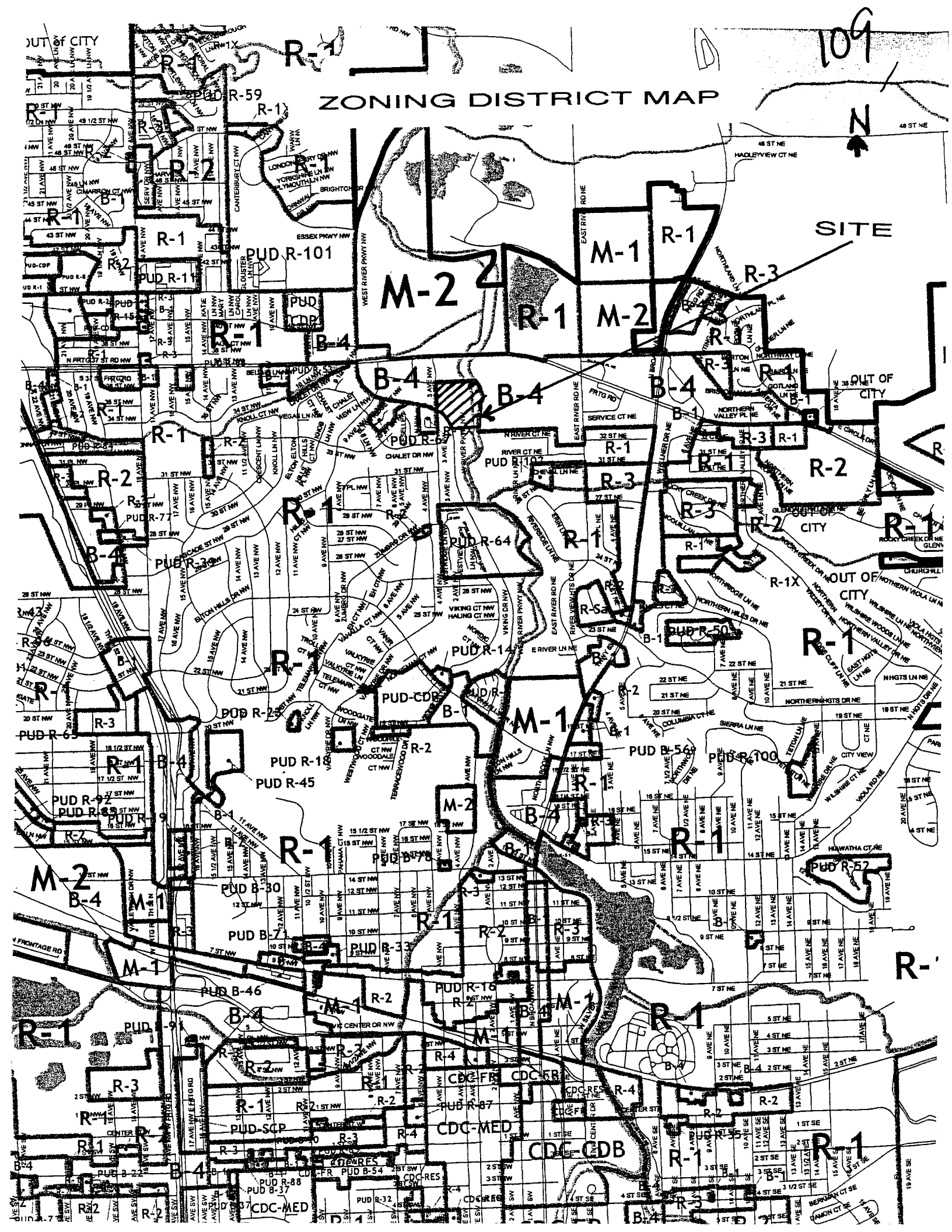
Seconded By:

Action:



ZC #03-17 GDP #215
Mark Leitzen
700' Notification Distance
Ward 6 Means
08/26/03

N



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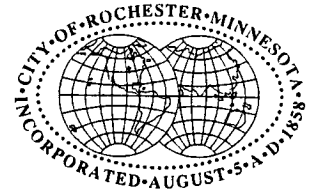
ROCHESTER-OLMSTED PLANNING DEPARTMENT

2122 Campus Drive SE, Suite 100 • Rochester, MN 55904-4744

COUNTY OF

Olmsted

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TO: City Planning and Zoning Commission

FROM: Brent Svenby, Planner

DATE: September 19, 2003

RE: Zoning District Amendment #03-17 by Mark Leitzen to amend the zoning from R-1 (Mixed Single Family) to the B-1 (Restricted Commercial) district on approximately 10.53 acres of land. The property is located east of HyVee, north of West River Parkway, south of 37th Street NW and west of the Zumbro River.

Planning Department Review:

Petitioner: Mark Leitzen
309 60th Ave SW
Rochester, MN 55902

Location of Property: The property is located along the northeast side of West River Parkway, east of 3rd Ave NW and the HyVee north store.

Requested Action: The applicant is requesting a Zoning District Amendment on this site to accommodate B-1 zoning. The property is currently zoned R-1 (Mixed Single Family). The GDP proposes three potential building sites.

Land Use Plan: The Rochester Urban Service Area Land Use Plan designates this property as "Flood Fringe" and "Commercial". The City Council approved the commercial designation on March 17, 2003.

Existing Land Use: The property is currently undeveloped.

Proposed Land Use: The General Development Plan for this property proposes three building sites, one is labeled as office/retail. The other two are not labeled as far as use.

Adjacent Land Use and Zoning: Property to the west of 3rd Ave. NW is the site of a HyVee grocery store. To the east is the Zumbro River. North of this property is a property zoned B-4, which is occupied by a steel sided building and the site is currently being used for seasonal sales of Christmas trees. To the south is a parcel of undeveloped property and the City parkland.



Southwest, across West River Parkway are townhomes and other residential development.

Transportation Access:

The GDP for this property proposes three accesses to the site, one from West River Parkway, which is proposed to be shared with the property to the south and two from 3rd Ave NW. Since West River Parkway is an Arterial roadway, the shared access is required to provide adequate spacing, while providing access to two properties.

Wetlands:

There may be hydric soils in the Floodway district. Additional site investigation should be completed. The property owner is responsible for identifying Westlands on the property and submitting the information to the LGU.

Neighborhood Meeting:

The applicant held a neighborhood meeting on September 11, 2003. The minutes from the meeting are attached to this report.

Referral Comments:

1. See comments attached to GDP 215

Report Attachments:

1. Location Map

Analysis for Zoning District Amendment:

Under the provisions of Paragraph 60.338 of the Rochester Land Development Manual, the Commission shall recommend for approval and the Council shall approve, an application requesting an amendment to the zoning map if the amendment satisfies the following criteria:

- 1) **The criteria of this subdivision apply to those amendments to the zoning map filed by formal petition. An amendment need only satisfy one of the following criteria:**
 - a) **The area, as presently zoned, is inconsistent with the policies and goals of the Comprehensive Plan;**
 - b) **The area was originally zoned erroneously due to a technical or administrative error;**
 - c) **While both the present and proposed zoning districts are consistent with the Plan, the proposed district better furthers the policies and goals of the Comprehensive Plan as found in Chapters 2 and 3 of the Rochester Urban Service Area Land Use Plan, Chapter 3 of the Housing Plan, and Chapter 10 of the ROCOG Long Range Transportation Plan; or**
 - d) **The area has changed or is changing to such a degree that it is in the public interest to rezone so as to encourage development or redevelopment of the area.**

The Rochester Urban Service Area Land Use Plan designates this property as appropriate for "commercial" types of uses. Zoning 10.53 acres of land to B-1 (Restricted Commercial) would be consistent with the "commercial" land use designation.

2) The criteria of this subdivision also apply to those amendments to the zoning map filed by formal petition. However, an amendment must satisfy all of the following criteria:

- a) the permitted uses allowed within the proposed zoning district will be appropriate on the subject property and compatible with adjacent properties and the neighborhood; and

Uses within the B-1 Zoning District would be appropriate on the property and compatible with adjacent properties, the properties to the west, north and east are all used for commercial uses or are zoned for commercial uses. According to the City of Rochester Zoning Ordinance, the B-1 zoning district recognizes areas of low intensity business use that are located adjacent to residential areas, but along major thoroughfares so as not to encourage customer traffic through the adjacent residential areas.

- b) the proposed amendment does not involve spot zoning. (Spot Zoning involves the reclassification of a single lot or several small lots to a district which is different than that assigned to surrounding properties, for reasons inconsistent with the purposes set forth in this ordinance, the state enabling legislation, or the decisions of courts in this state).

The amendment to B-1 would be consistent with the Rochester Urban Service Area Land Use Plan and would not be considered spot zoning.

Staff Recommendation:

The Planning Commission must make a motion to recommend approval or denial of this request. The Planning Commission must also make findings to support this recommendation. This recommendation will be forwarded to the City Council and heard at a later public hearing.

The ability to consider the Zone Change and the General Development Plan concurrently allows the City to consider this development proposal as a package. Based upon the accompanying General Development Plan for this site and the findings above, Staff recommends approval to rezone approximately 10.53 acres from the R-1 (Mixed Single Family) to the B-1 (Restricted Commercial) zoning district.

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September 11, 2003 minutes from neighborhood meeting

Gary Leitzen introduced himself and welcomed the neighbors to the meeting. Explained where the land is located. Told the neighbors he plans to submit a B1 zone change as well as a General Development Plan to the City of Rochester.

Gary explained this is the first part of the process. Earlier the city turned down a change to B4. Currently we have an interim grading permit for clearing and grubbing.

We are proceeding with a zone application. However, we will probably not build in the near future, but want the paperwork completed now.

Currently we do not know what business may decide to go into the project. There is approximately five acres of the ten-acre site that is unbuildable due to the floodway.

Roy Stevenson - Does the grading project have storm sewers?

Gary Leitzen - No storm sewers yet - There will be waterways on the land .

Dale Richter - What time frame are the current plans to bring in fill dirt?

Gary Leitzen - Originally planned to start bring in fill this fall.

George Berg - Will the debris currently on site be cleaned out now?

Gary Leitzen - Some of the debris has already been cleaned up.

George Berg - Do you envision the same kind of footprint as required in a B4?

Gary Leitzen - Yes

Dale Richter - How long does fill have to sit before being able to build on it?

Gary Leitzen - To be determined by an Engineer.

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Burns?

Is accessibility only off 3rd Ave?

Gary Leitzen -

Yes

Who is responsible to clean up the ditch now?

Gary Leitzen -

Landowner.

Judy Berg -

Access into Parkway Street is in bad condition now. Once trucks come into new area won't the street only get worse?

Gary Leitzen -

The parkway is not a truck route. However, delivery trucks may in there now. But I don't see a trucking firm going into the new area.

Dale

Will the access from West River Parkway cause traffic concerns?

Gary Leitzen -

Will work with Rochester Public Works.

Sandra Means -

Do you currently have access to 37th St. NW?

Gary Leitzen -

No

Who is doing the cleaning and grubbing work now?

Gary Leitzen -

Bob Abbolt

Kathy Kroepe

Do you have any businesses looking to lease buildings and what about 24 hour business'?

Gary Leitzen -

B1 zoning has restricted hours of operation as well as lighting and signage requirements.

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Dale

Do you plan to rent/lease/ or selling the project?

Gary Leitzen -

No, the plan is to develop, build to suit, and own the property.

Janet Stevenson -

Your plan is build an upscale building, what do you consider this to be?

Gary Leitzen -

Possibly a dental office, nice roofline, brick, trees.

If you get your B1 zoning, do you have to mention the building or businesses when you do the development plan?

Gary Leitzen -

No

Are you going to change from three pads?

Gary Leitzen -

Could be slight modification perhaps because of soil conditions.

Would you ever plan to change back to apartments or condos?

Gary Leitzen -

No

John Ernest -

The parkway often has standing water, and the road holds back the water – if you fill the land will you project hold back the water?

Gary Leitzen -

The waterways will be engineered to handle the water run-off

Judy Berg -

Some of the uses allowed in a B1, which includes signage, setbacks, and rooflines, are still a concern. How do you protect this?

Gary Leitzen -

B1 has more restrictive signage, setbacks, etc. However, the city doesn't want private covenants. We will agree to B1 and if allowed we will follow what is allowed.

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Judy Berg -

B5 will allow you to get your office buildings.

Gary Leitzen -

B1 is restrictive and it should work.

How soon before this goes before the council again.

Gary Leitzen -

The paperwork has already been filed. This should go before Planning and Zoning on September 24th.

Value the trees and hate to see the trees missing.

Gary Leitzen -

Some of the trees will go. The trees taken were "scrub trees" and some of the trees will be replaced with better trees. The "raw" dirt will need to be seeded or plant over. The waterways may also need to be seeded.

How much of the bike bath does the city own?

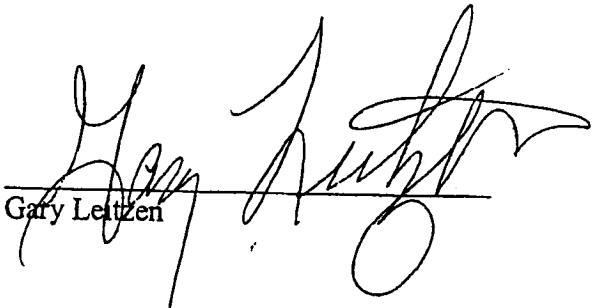
Gary Leitzen -

The City has an easement on part of the land for the bike path.

Is there a regulation on how many cars may flow through the area?

Gary Leitzen -

Rochester Public Works will make the decision. I believe that 3rd Ave. and West River Parkway should be adequate.


Gary Leitzen

entire frontages of the perimeter roadways, with the exception of any approved public streets access locations. No direct private driveway access will be permitted to any of the perimeter roadways. Additional Controlled Access will be required within 200 feet of 'A' & 'E' street intersections with any of the perimeter roadways, within 150 feet of 'B' street intersections of any perimeter roadway, and within ~~75~~ 35 feet from the intersections of any other public roadway with a perimeter roadway.

7. The southerly access to 60th Ave NW should be shifted to line up directly across from the access in the Kingsbury Hills development as was shown on the previous Special District / GDP Plan for Pebble Creek.
8. Any realignment on this Property of Valleyhigh Rd NW and the intersection with 60th Ave NW shall be consistent with the "60th Ave NW Corridor Management Plan", and may impact the proposed southerly access to 60th Ave NW. In the event the approved Corridor Plan shows the realigned intersection of Valleyhigh Rd NW & 60th Ave NW to be south of this Property, the southerly access to 60th Ave NW shown on the revised Special District GDP plan shall be eliminated.

PUBLIC HEARINGS:

Zoning District Amendment #03-16 by Western Walls, Inc. to amend the Floodway and Flood Fringe boundaries and related 100 Year Flood Protection Elevations for a portion of the South Run of the North Fork of Cascade Creek located in the Manorwood Lakes Sixth and Seventh Subdivisions.

Mr. Brent Svenby presented the staff report, dated September 17, 2003, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

With no one else wishing to be heard, Ms. Wiesner closed the public hearing.

Mr. Burke moved to recommend approval of Zoning District Amendment #03-16 by Western Walls, Inc. as presented by staff. Mr. Haeussinger seconded the motion. The motion carried 7-0.

~~X~~ Zoning District Amendment #03-17 by Mark Leitzen to amend the zoning from R-1 (Mixed Single Family) to the B-1 (Restricted Commercial) district on approximately 10.53 acres of land. The property is located east of HyVee, north of West River Parkway, south of 37th Street NW and west of the Zumbro River.

AND

General Development Plan #215 to be known as Leitzen West River Parkway by Mark Leitzen. The applicant is proposing to develop the property with commercial uses permitted in the B-1 zoning district. The property is located east of HyVee, north of West River Parkway, south of 37th Street NW and west of the Zumbro River.

Mr. Brent Svenby presented the staff report, dated September 19, 2003, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

Mr. Svenby explained that the submitted general development plan has notes on the right hand side regarding restricted covenants that would be recorded after the general development plan where approved. He stated that this should be deleted from the general development.

The condition relating to off-site improvements would only be required if turn lanes were required by the Public Works Department based on the projected traffic flows for the property.

Ms. Rivas asked if 3rd Avenue NW would be upgraded.

Mr. Svenby stated that the applicant would need to upgrade 3rd Avenue NW or pay their proportional share to accommodate the development.

Mr. Svenby explained that the applicant received a conditional use permit to do some filling activity in the flood fringe area of the property.

Ms. Wiesner asked why history of the previous City Council meeting was not part of the staff report.

Ms. Rivas explained that the City Council did not agree with B-4 zoning district with regard to hours of operation.

Mr. Svenby stated that the City Council denied the application for the B-4 zoning district due to the neighbor's concerns with regard to hours of operation and the type of uses that could be placed there. He explained that restrictions could not be put on a general development plan with regard to hours of operation.

The applicant's representative, Gary Leitzen, of 6165 10th Street SW, Rochester MN, addressed the Commission. He stated that the City Council did not like having private covenant restrictions on the general development plan as it was not enforceable by administration. Since the previous application request, they have received an interim grading permit. He indicated that the B-1 zoning district would be more restrictive on lighting, signage, and density. He also indicated that the closest neighbor would be 300 feet from the site. He explained that there would be more green space than a typical development due to the floodway.

Ms. Rivas asked how the buildings would be screened.

Mr. Leitzen responded there would be trees in the front and back.

Discussion ensued regarding what trees would be taken out.

Mr. George Berg, of 3406 Leisure Court NW, Rochester MN, addressed the Commission. He is the Vice President of Leisure Court Home Association. He explained that the neighbors were concerned about the hours of operation within the B-4 zoning district and about the many types of uses that could be placed in the development. The neighbors are in support of commercial type uses rather than residential. However, the B-1 zoning district allows for 36 different kinds of uses which are too broad. Although Gary Leitzen has indicated that he does not plan to put the types of uses that the neighborhood is concerned about, it is not a guarantee if he sold the property at some time. Therefore, the neighborhood would like Mr. Leitzen to petition for the B-5 zoning district.

Mr. Berg stated that the parking lot shown on the general development plan goes into the floodway now. He expressed concern with filling in the floodway. Also, a number of the neighbors have expressed concern about the additional traffic onto the parkway. He suggested having the access go to 3rd Avenue NW instead of the parkway. Also, he stated that he hoped the trees would not only be taken down but taken off site.

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Mr. Dale Richter, of 3401 Leisure Court NW, Rochester MN, addressed the Commission. He stated that agreed with Mr. Berg. He asked that the Commission consider the B-5 zoning district instead.

Ms. Judy Berg, of 3406 Leisure Court NW, Rochester MN, addressed the Commission. She indicated that she lived facing the proposed development. She stated that she was promised that the parkway would be a leisurely drive and not a heavily used public roadway when it was constructed. If access from the commercial property flowed onto the parkway, it would change the character of the neighborhood. She expressed concern that Mr. Leitzen could sell the property and the new owner could put different types of uses on the property in the B-1 zoning district that did not fit well into the neighborhood. She asked that the Commission consider the B-5 zoning district.

Ms. Rivas asked if the neighborhood association had spoken with HyVee about cleaning up the back side of their property.

Mr. Berg responded that concerns had been presented to HyVee in the past, but not recently.

Ms. Wiesner asked Mr. Leitzen why they wanted the B-1 instead of the B-5 zoning district.

Mr. Gary Leitzen responded that they already have a lot of money and effort tied into the property to clean it up. Therefore, they do not want to be that restrictive in the development. The B-1 zoning district is restrictive with consideration of signage, density, and setbacks.

Mr. George Berg stated that there are two drainage channels on the interim grading plan. He asked what would happen with regard to drainage after buildings and parking is located on the development.

Mr. Svenby responded that the applicant would need to submit a new grading plan when actual development is proposed on the site. The interim grading plan that is present at this time is only approved for fill in the flood fringe areas.

Mr. Al Wick, of 727 31st Street NW, Rochester MN, addressed the Commission. He stated that supports the comments made by the Leisure Court neighborhood. He expressed concern with connection to the West River Parkway. He stated that access to it would violate the recommended spacing standards. He indicated that it was unlikely that the property to the south would be developed so they shouldn't have to provide a connection. Most of the green space is being showed by the river and not by West River Parkway. He expressed concern about whether the buildings would be one story or two. He showed pictures of where the entrance onto West River Parkway would look like from the sidewalk in all directions and stated that it would affect site visibility and traffic.

Ms. Judith Berg stated, when the applicant proposed the B-4 zoning district, she submitted 300 signatures from neighbors in opposition. They did not object to the property being cleaned up and developed, but to the many different types of uses that could be put on the site.

With no one else wishing to be heard, Ms. Wiesner closed the public hearing.

Ms. Rivas moved to recommend denial of Zoning District Amendment #03-17 by Mark Leitzen based on the broad spectrum of uses that could be used that conflict with the

neighborhood. The motion died due to lack of a second.

Mr. Staver moved to recommend approval of Zoning District Amendment #03-17 by Mark Leitzen with the staff-recommended findings. Mr. Haeussinger seconded the motion.

Mr. Staver stated that the B-1 zoning district is a good compromise. The B-4 zoning district was too flexible.

Ms. Rivas suggested that the residents of Leisure Court contact the other businesses when the development is constructed so that improvement is made neighborhood wide.

The motion carried 6-1, with Ms. Rivas voting nay.

Mr. Staver moved to recommend approval of General Development Plan #215 to be known as Leitzen West River Parkway by Mark Leitzen with the staff-recommended findings and conditions. Mr. Quinn seconded the motion.

Ms. Rivas suggested that the applicant review the site plan. There is room on the property to move the parking lots back further from the road to accommodate additional landscaping.

The motion carried 7-1, with Ms. Rivas voting nay.

CONDITIONS:

1. The GDP shall be revised to include the following:
 - Existing and required pedestrian facilities
 - Additional right-of-way for 3rd Ave
 - Off-site improvements (turn lanes, if required)
2. Prior to Final Plat submittal, and/or development of this Property, the applicant shall enter into a Development Agreement with the City that outlines the obligations of the applicant relating to, but not limited to, stormwater management, transportation improvements (turn lanes), access control, pedestrian facilities, right-of-way dedication, access and extension of utilities for adjacent properties, and contributions for public infrastructure.
3. Grading & Drainage Plan approval is required prior to development. A Storm Water Management fee will apply to any areas of this development that are allowed to participate in the City's Storm Water Management Plan (SWMP), and do not drain to an on-site facility.
4. The Owner will be obligated to reconstruct 3rd Ave NW, or pay its proportional share of the cost of said reconstruction to serve this Property. Dedication of an additional 7 feet of right-of-way will be required of the Owner to accommodate the reconstructed roadway, and pedestrian facilities.
5. In addition to the existing pedestrian facilities along the frontage of West River Parkway NW, the Owner is obligated to provide a 5 foot concrete sidewalk along the entire frontage of the Property abutting 3rd Ave NW. Dedication of a Pedestrian Facilities Easement will be required for the existing path.

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6. The owner shall dedicate a 30-foot wide utility easement, centered on the existing sanitary sewer on the property.
 7. Traffic review will be required at the time of site development plan submittal. The development may require left turning lane on West River Pkwy and 3rd Ave depending upon the type of Land Uses. The length of left turning lane will be determined once specific square footage area and uses are known.
 8. When the property is development the water system installed must interconnect both of the Main Level Water System mains available to serve this property. The proposed water system must extend to all adjoining developable properties per the RPU Water Division requirements.

OTHER BUSINESS:

1. As may be brought up with members

No discussion items where brought forward.

ADJOURN:

Motion made by Mr. Staver to adjourn, seconded by Ms. Rivas. Ms. Lisa Wiesner, Chair, adjourned the meeting at 8:55 p.m.

Respectfully Submitted:

Philip H. Wheeler, AICP

Ms. Lisa Wiesner, Chair

jlg

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RECORD OF OFFICIAL PROCEEDINGS OF THE COMMON COUNCIL
CITY OF ROCHESTER, MINNESOTA
Regular Meeting No. 7 - March 17, 2003

6721

Agenda
Item

Councilmember Marcoux moved, Nowicki seconded to approve the Public Transportation Franchise for Lagnaf, Inc. dba Rochester Express Airport Shuttle, Inc. for the period ending December 31, 2005 and instructed the City Attorney to prepare the required ordinance. Ayes, (7), Nays (0). Motion carried.

D-15

Councilmember McConnell stated his opposition to the wage recommendations for 2003 for Non-Bargaining Unit Employees due to the tough economic times and state cutbacks. Linda Gilsrud, HR Director, explained the contract included police and fire department staff and the respective Chiefs supported the recommendation. Steve Kvenvold, City Administrator, stated that the Non-Bargaining Unit Employees should not be penalized because of their non-union status.

Councilmember Hanson moved, Nowicki seconded to adopt Resolution No. 148-03 approving the Non-Bargaining Unit Employees wage recommendations for 2003. Ayes (6), Nays (1). Motion carried. Councilmember McConnell voting nay.

D-23

Councilmember Benson asked about the urgency to complete this project. Doug Nelson, Public Works Department, explained that there are federal funds targeted for 2003 that will be used to complete this project and if not used, will be lost. This is an area quickly developing and will need improving soon.

Councilmember Hanson moved, Marcoux seconded to adopt Resolution No. 149-03 authorizing the City Clerk to advertise for bids for Project No. M1-50 (J-5) "Construction of Bandel Road NW". Ayes (7), Nays (0). Motion carried.

E-1

A Hearing on Land Use Plan Amendment Petition #02-06 by Mark Leitzen to amend Land Use Plan designation from Low Density Residential to Commercial and the zoning from R-1 to the B-4 district on property located east of HyVee, north of West River Parkway, south of 37th Street NW and west of the Zumbro River.

Wishing to be heard was Bill Tointon, McGhie and Betts representing the developer. He explained this item had been continued to further evaluate and meet with staff regarding legal issues on restricted covenants. He presented plan changes and restricted covenants texts that were developed by the Leitzen's attorney. (Ken Moen) He explained the changes and amendments.

Wishing to be heard was George Berg, 3406 Leisure Court NW, spoke in opposition of the development. He spoke of the area being an asset to the neighborhood and felt the B-4 zoning proposal would take away from the walkways and trails.

Wishing to be heard was Bonnie Truax, 5415 West River Road NW. She was concerned about the wetlands and landfill. It was explained that the Flood Plain Ordinance governs this area and any construction is regulated by these standards.

Wishing to be heard was Judy Berg, 3406 Leisure Court NW. She stated she was in opposition to the B-4 Zoning. She didn't feel that a covenant was an adequate way to control development once it is zoned. A petition was presented and is on file.

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6722

RECORD OF OFFICIAL PROCEEDINGS OF THE COMMON COUNCIL
CITY OF ROCHESTER, MINNESOTA
Regular Meeting No. 7 - March 17, 2003

Agenda
Item

Wishing to be heard was Ronald Neubauer, 3414 Leisure Court NW was opposed to the zone change.

Wishing to be heard was Rick Henderson, 3341 Leisure Court NW, president of the Townhome Association was opposed to the zone change.

Wishing to be heard was Cathy Knopp, 3410 Leisure Court NW. She was opposed to the zone change.

Wishing to be heard was Elena Henderson, 3341 Leisure Court NW. She was opposed to the zone change.

Having no one further wishing to be heard, President Hunziker closed the hearing.

Councilmember Benda felt the zone change would not adhere to the ordinance standards. It was clarified that the council action request was for the Land Use Plan to be amended from Low Density Residential to Commercial. The type of Commercial would be determined in the future.

Councilmember Benda moved to deny approval of Land Use Plan Amendment Petition #02-06 based on staff findings. Motion died for a lack of second.

Councilmember Hanson moved, Marcoux seconded to adopt Resolution No. 150-03 approving the Land Use Plan Amendment #02-06 to amend Land Use Plan designation from "Low Density Residential" to "Commercial" without specifying type of zone based on the Planning Commission findings and Mr. Tointon's findings submitted at the last council meeting (February 19, 2002) and instructing the City Attorney to prepare Findings of Facts, Conclusions of Law, and Order. Ayes (6), Nays (1). Motion carried. Councilmember Benda voted nay.

A Hearing on Zoning District Amendment #02-15 by Mark Leitzen to change the zoning from R-1 to B-4 on property located East of HyVee, north of West River Parkway, south of 37th Street NW and west of the Zumbro River.

Wishing to be heard was George Berg, 3406 Leisure Court NW. He stated he would like to see this zone a special district.

Wishing to be heard was Judith Berg, 3406 Leisure Court NW. She asked what would happen if the council took no action on this request and if a majority of vote is needed to pass a zone change. City Attorney, Terry Adkins, responded that if no action was taken that it would automatically be passed after expiration of the 120 day time period and that the zone changes requires a two-thirds vote to pass.

Wishing to be heard was Bill Tointon, McGhie and Betts, representing the developer. He stated that Special District Zoning for this property would not alleviate the problem and may cause more frustration and time wasted for himself and staff. He would be agreeable to staff recommendation of a new zoning district between the B-1 and the B-4 zoning districts.

E-2

Agenda
Item

Councilmember Marcoux was concerned whether a warehouse was one of the uses discussed for this area. Mr. Tointon explained that any warehouse would be utilized in conjunction with the business office as their storage.

President Hunziker asked if a Restricted Development could be used for this property. Mizti Baker, Planning Department, stated it was an option but requires the developer to determine what exactly is going to be done with the property without variations and that may not always be an option.

Mr. Tointon stated this really wasn't an option for the developer at this time.

Councilmember Nowicki asked why staff felt a covenant for the area would work in this incident where many covenants are only as enforceable as the neighbors that are willing to enforce them. Terry Adkins, City Attorney, stated that the covenants could be considered as conditions of approval that would be on record.

Having no one further wishing to be heard, President Hunziker closed the hearing.

Councilmember Benda moved, Stobaugh seconded to deny the Zoning District Amendment #02-15 by Mark Leitzen to amend the zoning from R-1 to B-4 based on staff findings and instructed the City Attorney to prepare Findings of Facts, Conclusions of Law, and Order. Ayes (5), Nays (2). Motion carried. Councilmembers Hanson and Marcoux voted nay.

E-3

A Hearing on General Development Plan #195 by Mark Leitzen to be known as West River Parkway on property located east of HyVee, north of West River Parkway, south of 37th Street NW and west of the Zumbro River.

Having no one wishing to be heard, President Hunziker closed the hearing.

Councilmember Nowicki moved, Benda seconded to deny the General Development Plan #195 by Mark Leitzen to be known as West River Parkway based on staff findings and the outcome of E-2 public hearing. Ayes (7), Nay (0). Motion carried.

E-4

A Hearing on General Development Plan #199 to be known as 37th Street Commercial Park on property located east of the Zumbro River, west of East River Road NE and south of 37th Street NE.

Wishing to be heard was Charlie DuMond, Yaggy & Son, representing the developer. He stated that he had met with staff and was in agreement with all the conditions and also the revision to condition four. The developer is willing to reserve right-of-way for a cul-de-sac along East River Road to improve through traffic between the neighborhood and the commercial areas.

Charlie Reiter, Senior Transportation Planner, recommended including condition number ten stating the developer agrees to reserve the additional right-of-way necessary to construct a turn-around on East River Road. This deal and turn around will be constructed if Public Works determines this is required to limit traffic to East River Road south of the development.